

#### IV. Elimination of the National Ownership Cap Will Not Adversely Impact Diversity

NASA argues that increasing the national ownership cap will somehow reduce the level of diversity.<sup>45</sup> The argument is based on two unsupportable assumptions. The first assumption is that diversity should be measured on a national basis. NASA fails to acknowledge the Commission's view that the ownership rules' effects on diversity are to be evaluated in the context of the local television markets: "[N]ational broadcast ownership limits... ordinarily are not pertinent to assuring a diversity of views to the constituent elements of the American public."<sup>46</sup> The NAB study submitted with its opening comments demonstrates that local market diversity is thriving at unprecedented levels.<sup>47</sup> NASA produces no evidence that greater group ownership of television stations would diminish diversity in local markets. Indeed, NASA itself, in an earlier proceeding, has conceded that group ownership "by itself does not remove the incentive to respond to local needs because a

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<sup>45</sup>NASA Comments at 12-13.

<sup>46</sup>1994 Ownership Order, par. 60. The Commission has repeatedly reaffirmed that conclusion. Second Report and Order, MM Docket No. 87-7, 4 FCC Rcd 1723, 65 RR 2d 1589 (1989) (One-To-A-Market Order); modified on reconsideration, Memorandum Opinion and Order, MM Docket No. 87-7, 66 RR 2d 1115 (1989); Report and Order, MM Docket No. 91-140, 7 FCC Rcd 2755, 70 RR 2d 903 (1992) ("Radio ownership Order"), par. 20, modified on reconsideration, Memorandum Opinion and Order, MM Docket No. 91-140, 71 RR 2d 227 (1992).

<sup>47</sup>NAB Comments, Appendix B at 1. The study concludes that "From the increase in radio and television stations to the increase in cable channels to the availability of 150-200 DBS channels to the connecting of a near-infinite number of Internet sites, consumers can now access a multitude of information and entertainment sources."

group owner still is most concerned about the performance of each television station in its individual market."<sup>48</sup> As we showed in our opening comments, there is a plain correlation between an affiliated station's commitment to localism and overall commercial success.<sup>49</sup> Although NASA harps on the danger posed by network ownership of affiliates and the supposed inevitable elimination of local programming that would eventuate, NASA fails to cite a single instance of a network thwarting local program decisions in the entire forty-year history of television network operations. We submit that it cannot do so because the NASA argument is based on a fiction lacking historical foundation or business logic.

Second, NASA takes the unreasonably crabbed view that only broadcast television stations should be considered in assessing diversity concerns. As we pointed out in our opening comments, diversity analysis should properly take account of all media available to consumers in a given market, including those located outside the market but serving residents within. The media should include broadcast television, cable, DBS, MMDS, radio, videocassettes, newspapers, yellow pages, direct mail, outdoor and,

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<sup>48</sup>Comments of Network Affiliated Stations Alliance, (filed May 17, 1995) in MM Docket No. 91-221 & 87-8, at 8 n. 5.

<sup>49</sup>ABC Comments at 15; Exhibit A. We have similarly shown in another proceeding the success of each network's prime-time schedule is closely linked to the strength of the lead-in provided by its affiliates' local news programs. Comments of Capital Cities/ABC, Inc. (filed Mar. 23, 1992) in MM Docket No. 82-434 at 13 and Exhibit D.

increasingly, the Internet.<sup>50</sup> Even the Commission has taken a broader view of the product market for diversity including (too narrowly, in our view) broadcast television, cable and, to a lesser extent, newspapers and radio.<sup>51</sup>

V. Elimination of the National Ownership Rule Would Enhance Competition By Providing Opportunities for Efficiencies

Finally, NASA argues that no public interest benefit would flow from eliminating or raising the national cap.<sup>52</sup> To the contrary, elimination of the national ownership rule would enhance competition by allowing group owners who are able to operate stations in the most efficient manner by exploiting economies of scale to expand their station portfolios.<sup>53</sup> Group ownership by network companies would make possible a number of demonstrable efficiencies. Network broadcast television is a highly risky and variable business which requires investments of billions of dollars each year in programming well in advance of any revenue commitments

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<sup>50</sup> See ABC Comments at 16-17.

<sup>51</sup> 1995 Further Ownership Notice, pars. 70-74.

<sup>52</sup> NASA Comments at 14-15.

<sup>53</sup> See ABC Comments at 6. Among the specific efficiency benefits the Commission has recognized flowing from group ownership of broadcast stations are group advertising sales and program purchasers, consolidation of administrative functions, joint capital expenditures for equipment and facilities, and sharing the cost of professional services by lawyers, accountants, insurers and engineers. See Report and Order, 100 FCC 2d 17, 56 RR 2d 859, par. 82 (1984); First Report and Order, 4 FCC Rcd 1723, 65 RR 2d 1589, pars. 39-45 (1989).

from advertisers. It must compete against cable networks that enjoy both advertisers and subscriber revenues.<sup>54</sup> Ownership of additional stations would spread the risk of the network's investment by providing a more stable and predictable source of revenue than the television network business.

New opportunities for station investment would come at a crucial time for network companies as the success of competitive services has substantially reduced the national viewership of networks.<sup>55</sup> As the video marketplace grows even more competitive -- and some even question the long-term viability of over-the-air broadcasting -- the fear of networks expressed by NASA and others should not be permitted to stand in the way of the networks seeking to remain strong through increased station ownership to meet this new competition. Indeed, given the precarious state of network economics, it is surprising that affiliates continue to oppose deregulation that potentially would strengthen the network business and network/affiliate partnership.

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<sup>54</sup>See "Iger's Network Call: Abandon Old Ways," Electronic Media, Apr. 13, 1998, p. 27 (noting of all profitable TV networks in 1997, only one was broadcast network).

<sup>55</sup>The four major networks have continued to lose audience to their competitors; their collective average prime time household share for the 1987-88 season was 76.6, but ten years later it had diminished to 59. EI PTAR Analysis, Appendix A, Table A-1; 1997 Video Rep., par. 92.

CONCLUSION

For the reasons stated, the Commission should eliminate the national ownership rule, or at minimum increase the 35% coverage cap to 50%. If the Commission elects to retain some television ownership cap, it should eliminate the 50% UHF ownership discount.

Respectfully submitted,

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**May 1998 Sweep**  
**National Performance - Adults 18-49**




|  | % VHF<br><u>U.S. Cvg.</u> | % UHF<br><u>U.S. Cvg.</u> | Primetime  |               | Sign-on/Sign-off<br>(6:00am-2:00am) |               |
|--|---------------------------|---------------------------|------------|---------------|-------------------------------------|---------------|
|  |                           |                           | <u>rtg</u> | <u>actual</u> | <u>rtg</u>                          | <u>actual</u> |
|   | 78%                       | 20%                       | 4.4        | 5,460,000     | 2.0                                 | 2,480,000     |
|   | 84%                       | 14%                       | 3.8        | 4,730,000     | 1.7                                 | 2,070,000     |
|   | 81%                       | 17%                       | 7.5        | 9,330,000     | 2.8                                 | 3,520,000     |
|  | 41%                       | 55%                       | 5.0        | 6,220,000     | 1.5                                 | 1,900,000     |

Source: Nielsen, NTI 4/23/98-5/20/98 (ratings) / NSI, 1997-98 Household Coverage





# Examples Of Strong Performing X-Files (Sun 9-10pm ET) On FOX UHF Stations Vs. VHF Network Competition

|   |            | National         |              |          | Boston           |              |          | Houston          |              |          | Denver           |              |          | Pittsburgh       |              |          | Sacramento       |  |  |
|---|------------|------------------|--------------|----------|------------------|--------------|----------|------------------|--------------|----------|------------------|--------------|----------|------------------|--------------|----------|------------------|--|--|
|   |            |                  |              |          |                  |              |          |                  |              |          |                  |              |          |                  |              |          |                  |  |  |
|   |            | A18-49<br>Rating | Call<br>Ltrr | Ch.<br># | A18-49<br>Rating | Call<br>Ltrr | Ch.<br># | A18-49<br>Rating | Call<br>Ltrr | Ch.<br># | A18-49<br>Rating | Call<br>Ltrr | Ch.<br># | A18-49<br>Rating | Call<br>Ltrr | Ch.<br># | A18-49<br>Rating |  |  |
|  | X-Files    | 9.7              | WFXT         | 25       | 15.0             | KRIV         | 26       | 10.8             | KDVR         | 31       | 15.6             | WPGH         | 53       | 10.4             | KTXL         | 40       | 17.7             |  |  |
|  | Sun 9-10pm | 5.9              | WCVB         | 5        | 5.5              | KTRK         | 13       | 7.8              | KMGH         | 7        | 6.7              | WTAE         | 4        | 6.9              | KXTV         | 10       | 4.8              |  |  |
|  | Sun 9-10pm | 5.6              | WBZ          | 4        | 4.7              | KHOU         | 11       | 5.7              | KCNC         | 4        | 4.9              | KDKA         | 2        | 5.8              | KOVR         | 13       | 4.6              |  |  |
|  | Sun 9-10pm | 8.3              | WHDH         | 7        | 7.8              | KPRC         | 2        | 6.9              | KUSA         | 9        | 8.7              | WPXI         | 11       | 9.1              | KCRA         | 3        | 10.2             |  |  |




Source: NTI (4/23/98-5/20/98), NSI May 1998 Nielsen Survey (4/23/98-5/20/98)

-  Sun 9-10pm ABC Sunday Movie
-  Sun 9-10pm CBS Sunday Movie/Touched By An Angel
-  Sun 9-10pm NBC Sunday Movie

## Examples Of Strong Performing Friends (Thu 8-8:30pm) On UHF NBC Stations Vs. VHF ABC/CBS Competition





|   |              | <b>National</b> |  |  | <b>San Diego</b> |            |               | <b>Hartford &amp; New Haven</b> |            |               | <b>Kansas City</b> |            |               | <b>Dayton</b> |            |               | <b>Flint-Sag.</b> |            |               | <b>Toledo</b> |            |               |
|---|--------------|-----------------|--|--|------------------|------------|---------------|---------------------------------|------------|---------------|--------------------|------------|---------------|---------------|------------|---------------|-------------------|------------|---------------|---------------|------------|---------------|
|   |              |                 |  |  | Mkt Rank: 26     |            |               | Mkt Rank: 27                    |            |               | Mkt Rank: 31       |            |               | Mkt Rank: 53  |            |               | Mkt Rank: 63      |            |               | Mkt Rank: 66  |            |               |
|   |              | <u>A18-49</u>   |  |  | <u>Call</u>      | <u>Ch.</u> | <u>A18-49</u> | <u>Call</u>                     | <u>Ch.</u> | <u>A18-49</u> | <u>Call</u>        | <u>Ch.</u> | <u>A18-49</u> | <u>Call</u>   | <u>Ch.</u> | <u>A18-49</u> | <u>Call</u>       | <u>Ch.</u> | <u>A18-49</u> | <u>Call</u>   | <u>Ch.</u> | <u>A18-49</u> |
|   |              | <u>Rating</u>   |  |  | <u>Ltrr</u>      | <u>#</u>   | <u>Rating</u> | <u>Ltrr</u>                     | <u>#</u>   | <u>Rating</u> | <u>Ltrr</u>        | <u>#</u>   | <u>Rating</u> | <u>Ltrr</u>   | <u>#</u>   | <u>Rating</u> | <u>Ltrr</u>       | <u>#</u>   | <u>Rating</u> | <u>Ltrr</u>   | <u>#</u>   | <u>Rating</u> |
|   | Friends      | 16.4            |  |  | KNSD             | 39         | 20.8          | WVIT                            | 30         | 17.2          | KSHB               | 41         | 17.2          | WKEF          | 22         | 16.9          | WEYI              | 25         | 16.1          | WNWO          | 24         | 19.9          |
|   | Thu 8-8:30pm | 1.8             |  |  | KGTV             | 10         | 1.4           | WTNH                            | 8          | 0.6           | KMBC               | 9          | 1.3           | WDTN          | 2          | 3.0           | WJRT              | 12         | 0.7           | WTVG          | 13         | 1.3           |
|   | Thu 8-8:30pm | 2.4             |  |  | KFMB             | 8          | 2.9           | WFSB                            | 3          | 2.6           | KCTV               | 5          | 3.1           | WHIO          | 7          | 5.4           | WNEM              | 5          | 3.2           | WTOL          | 11         | 3.2           |
|  | Thu 8-8:30pm | 3.5             |  |  | XETV             | 6          | 6.3           | WTIC                            | 61         | 3.4           | WDAF               | 4          | 3.4           | WRGT          | 45         | 4.2           | WSNH              | 66         | 4.0           | WUPW          | 36         | 4.4           |

Source: NTI(4/23/98-5/20/98), NSI May 1998 Nielsen Survey (4/23/98-5/20/98)

-  Thu 8-8:30pm ABC Thursday Movie/Ice Skating Championships
-  Thu 8-8:30pm Promised Land
-  Thu 8-8:30pm Worlds Wildest Police Chases






# Examples Of Strong Performing Dharma And Greg (W 8:30-9pm) On UHF ABC Stations Vs. VHF CBS/NBC Competition

|   | National         | St. Louis    |          |                  | West Palm Bch |          |                  | Traverse City |          |                  | La Crosse-Eau Cl. |          |                  | Columbia-Jeff. City |          |                  |
|---|------------------|--------------|----------|------------------|---------------|----------|------------------|---------------|----------|------------------|-------------------|----------|------------------|---------------------|----------|------------------|
|   |                  | Mkt Rank: 21 |          |                  | Mkt Rank: 43  |          |                  | Mkt Rank: 119 |          |                  | Mkt Rank: 129     |          |                  | Mkt Rank: 145       |          |                  |
|   | A18-49<br>Rating | Call<br>Ltr  | Ch.<br># | A18-49<br>Rating | Call<br>Ltr   | Ch.<br># | A18-49<br>Rating | Call<br>Ltr   | Ch.<br># | A18-49<br>Rating | Call<br>Ltr       | Ch.<br># | A18-49<br>Rating | Call<br>Ltr         | Ch.<br># | A18-49<br>Rating |
|  Dharma & Greg | 5.5              | KDNL         | 30       | 6.3              | WPBF          | 25       | 8.1              | WGTU          | 29       | 10.4             | WXOW              | 19       | 6.4              | KMIZ                | 17       | 5.3              |
|  Wed 8:30-9pm  | 4.2              | KMOV         | 4        | 5.5              | WPEC          | 12       | 8.0              | WWTV          | 9        | 4.5              | WKBT              | 8        | 2.8              | KRCG                | 13       | 3.9              |
|  Wed 8:30-9pm  | 4.3              | KSDK         | 5        | 5.7              | WPTV          | 5        | 7.1              | WPBN          | 7        | 6.5              | WEAU              | 13       | 2.5              | KOMU                | 8        | 2.8              |
|  Wed 8:30-9pm  | 6.2              | KTVI         | 2        | 5.9              | WFLX          | 29       | 10.1             | WGKI          | 33       | 3.1              | WLAX              | 25       | 5.0              | KQFX*               | 11       | 0.7              |

Source: NTI (4/23/98-5/20/98), NSI May 1998 Nielsen Survey (4/23/98-5/20/98)

\*KQFX is a LPTV station.

-  Wed 8:30-9pm Candid Camera Sp./Kids Say-Things/The Nanny/Sonny & Me
-  Wed 8:30-9pm Seinfeld Specials/Sat Nt Live C. Farley Sp.
-  Wed 8:30-9pm Beverly Hills 90210

## Top Five Syndicated Programs - May 1998

### **Traditional Top Rated Syndicated Programs - Predominantly VHF Station Distribution**

| <u>Program</u>   | <u>National<br/>HH Rating</u> | <u>Synd HH<br/>Rating Rank</u> | <u>Total #<br/>of Stations</u> | <u>Total<br/>VHF</u> | <u>Total<br/>UHF</u> | <u>VHF % Of<br/>Total Stations</u> |
|------------------|-------------------------------|--------------------------------|--------------------------------|----------------------|----------------------|------------------------------------|
| Wheel Of Fortune | 10.5                          | 1                              | 197                            | 156                  | 41                   | 79%                                |
| Jeopardy         | 9.0                           | 2                              | 192                            | 149                  | 43                   | 78%                                |
| Oprah            | 6.8                           | 5                              | 202                            | 166                  | 36                   | 82%                                |

### **More Recent Top Rated Syndicated Programs - Mix Of UHF/VHF Distribution**

| <u>Program</u> | <u>National<br/>HH Rating</u> | <u>Synd HH<br/>Rating Rank</u> | <u>Total #<br/>of Stations</u> | <u>Total<br/>VHF</u> | <u>Total<br/>UHF</u> | <u>VHF % Of<br/>Total Stations</u> |
|----------------|-------------------------------|--------------------------------|--------------------------------|----------------------|----------------------|------------------------------------|
| Jerry Springer | 7.6                           | 3                              | 164                            | 53                   | 111                  | 32%                                |
| Seinfeld       | 7.1                           | 4                              | 203                            | 89                   | 114                  | 44%                                |

Source: NTI 4/23/98-5/20/98 (May Sweep Dates), NSI May 1998 Survey

## Examples of Jerry Springer #1 on UHF Stations in Markets With at Least 2 VHF Competitors

### Nashville Mkt Rank 33

| <u>Affil.</u> | <u>Ch.#</u> | <u>Call</u><br><u>Ltr</u> | <u>Program</u> | <u>TP</u> | <u>hh</u><br><u>rtg</u> | <u>a18-49</u><br><u>rtg</u> |
|---------------|-------------|---------------------------|----------------|-----------|-------------------------|-----------------------------|
| WB            | 58          | WNAB                      | Jerry Springer | 10:30p    | 7.4                     | 6.1                         |
| NBC           | 4           | WSMV                      | News/Tonight   | 10:30p    | 6.3                     | 3.9                         |
| CBS           | 5           | WTVF                      | News/Letterman | 10:30p    | 4.8                     | 2.9                         |
| ABC           | 2           | WKRN                      | Cosby/Coach    | 10:30p    | 4.1                     | 2.2                         |

### New Orleans Mkt Rank 41

| <u>Affil.</u> | <u>Ch.#</u> | <u>Call</u><br><u>Ltr</u> | <u>Program</u>  | <u>TP</u> | <u>hh</u><br><u>rtg</u> | <u>a18-49</u><br><u>rtg</u> |
|---------------|-------------|---------------------------|-----------------|-----------|-------------------------|-----------------------------|
| ABC           | 26          | WGNO                      | Jerry Springer  | 4:00p     | 12.4                    | 9.0                         |
| CBS           | 4           | WWL                       | Jeopardy/Inside | 4:00p     | 9.6                     | 2.4                         |
| FOX           | 8           | WVUE                      | Judge/Judge     | 4:00p     | 4.3                     | 1.2                         |
| NBC           | 6           | WDSU                      | Montel          | 4:00p     | 4.1                     | 1.7                         |

### Rochester Mkt Rank 75

| <u>Affil.</u> | <u>Ch.#</u> | <u>Call</u><br><u>Ltr</u> | <u>Program</u> | <u>TP</u> | <u>hh</u><br><u>rtg</u> | <u>a18-49</u><br><u>rtg</u> |
|---------------|-------------|---------------------------|----------------|-----------|-------------------------|-----------------------------|
| FOX           | 27          | WUHF                      | Jerry Springer | 10:00a    | 3.9                     | 2.3                         |
| NBC           | 10          | WHEC                      | Dr, Quinn      | 10:00a    | 1.8                     | 0.8                         |
| CBS           | 8           | WROC                      | Martha/Gayle   | 10:00a    | 1.4                     | 0.3                         |
| ABC           | 13          | WOKR                      | Jenny Jones    | 10:00a    | 1.1                     | 0.5                         |

### Savannah Mkt Rank 100

| <u>Affil.</u> | <u>Ch.#</u> | <u>Call</u><br><u>Ltr</u> | <u>Program</u> | <u>TP</u> | <u>hh</u><br><u>rtg</u> | <u>a18-49</u><br><u>rtg</u> |
|---------------|-------------|---------------------------|----------------|-----------|-------------------------|-----------------------------|
| ABC           | 22          | WJCL                      | Jerry Springer | 5:00p     | 9.4                     | 7.3                         |
| CBS           | 11          | WTOG                      | Local News     | 5:00p     | 8.2                     | 2.4                         |
| NBC           | 3           | WSAV                      | Oprah          | 5:00p     | 7.0                     | 4.2                         |
| FOX           | 28          | WTGS                      | Boy Mts/Hangin | 5:00p     | 1.3                     | 0.6                         |

Note: In each market, Jerry Springer and the top 3 competitors in the time period are displayed.

## Seinfeld #1 on UHF Stations in Markets With at Least 2 VHF Competitors

| Sacramento  |      |          |               |       |        |            |
|-------------|------|----------|---------------|-------|--------|------------|
| Mkt Rank 20 |      |          |               |       |        |            |
| Affil.      | Ch.# | Call Ltr | Program       | TP    | hh rtg | a18-49 rtg |
| FOX         | 40   | KTXL     | Seinfeld      | 7:30p | 10.4   | 9.3        |
| ABC         | 10   | KXTV     | Wheel-Fortune | 7:30p | 9.3    | 2.3        |
| CBS         | 13   | KOVR     | Various       | 7:30p | 8.0    | 2.9        |
| NBC         | 3    | KCRA     | Real TV       | 7:30p | 7.4    | 3.2        |

| San Diego   |      |          |               |       |        |            |
|-------------|------|----------|---------------|-------|--------|------------|
| Mkt Rank 26 |      |          |               |       |        |            |
| Affil.      | Ch.# | Call Ltr | Program       | TP    | hh rtg | a18-49 rtg |
| UPN         | 51   | KUSI     | Seinfeld      | 7:00p | 9.0    | 6.2        |
| NBC         | 39   | KNSD     | Wheel-Fortune | 7:00p | 8.6    | 3.0        |
| CBS         | 8    | KFMB     | ET            | 7:00p | 5.4    | 2.7        |
| FOX         | 6    | XETV     | Simpsons      | 7:00p | 4.6    | 3.3        |

| San Antonio |      |          |                |        |        |            |
|-------------|------|----------|----------------|--------|--------|------------|
| Mkt Rank 38 |      |          |                |        |        |            |
| Affil.      | Ch.# | Call Ltr | Program        | TP     | hh rtg | a18-49 rtg |
| FOX         | 29   | KABB     | Seinfeld       | 10:30p | 10.0   | 8.9        |
| NBC         | 4    | KMOL     | Tonight Show   | 10:30p | 9.7    | 4.7        |
| ABC         | 12   | KSAT     | Inside Edition | 10:30p | 8.9    | 5.4        |
| CBS         | 5    | KENS     | Cheers         | 10:30p | 6.8    | 3.5        |

| Augusta      |      |          |              |        |        |            |
|--------------|------|----------|--------------|--------|--------|------------|
| Mkt Rank 109 |      |          |              |        |        |            |
| Affil.       | Ch.# | Call Ltr | Program      | TP     | hh rtg | a18-49 rtg |
| FOX          | 54   | WFXG     | Seinfeld     | 11:30p | 5.8    | 4.2        |
| ABC          | 6    | WJBF     | ABC Niteline | 11:30p | 4.3    | 1.4        |
| CBS          | 12   | WRDW     | Letterman    | 11:30p | 3.8    | 2.3        |
| NBC          | 26   | WAGT     | Tonight Show | 11:30p | 2.0    | 1.0        |

Note: In eachmarket, Seinfeld and the top 3 competitors in the time period are displayed.

## Affiliate Switch Markets

Examples Of CBS Switching From A VHF To A VHF Independent Station With No Local News Presence

### VHF To VHF Switch

Dallas-Ft. Worth / Market Rank #8

#### 1 Hour Daytime Drama Average

|            | <b>KDFW</b><br>①<br><b>Ch. 4</b><br><b>1994-95</b> | <b>KTVT</b><br>②<br><b>Ch. 11</b><br><b>1995-96</b> | <b>% Change</b> |
|------------|--|---|-----------------|
| HH Rtg     | 5.5  | 6.0   | 9%              |
| W25-54 Rtg | 3.9  | 3.7   | -5%             |

#### CBS Evening News

|            | <b>KDFW</b><br>①<br><b>Ch. 4</b><br><b>1994-95</b> | <b>KTVT</b><br>②<br><b>Ch. 11</b><br><b>1995-96</b> | <b>% Change</b> |
|------------|--|---|-----------------|
| HH Rtg     | 6.7  | 2.4   | -64%            |
| A25-54 Rtg | 3.1  | 1.0   | -68%            |

#### CBS Primetime

|            | <b>KDFW</b><br>①<br><b>Ch. 4</b><br><b>1994-95</b> | <b>KTVT</b><br>②<br><b>Ch. 11</b><br><b>1995-96</b> | <b>% Change</b> |
|------------|--|---|-----------------|
| HH Rtg     | 12.6   | 9.4   | -25%            |
| A18-49 Rtg | 6.3  | 5.0   | -21%            |

#### Sign-On/Sign-Off (6am-2am)

|            | <b>KDFW</b><br>①<br><b>Ch. 4</b><br><b>1994-95</b> | <b>KTVT</b><br>②<br><b>Ch. 11</b><br><b>1995-96</b> | <b>% Change</b> |
|------------|--|---|-----------------|
| HH Rtg     | 6.2  | 4.4   | -29%            |
| A18-49 Rtg | 2.9  | 2.0   | -31%            |

Source: NSI Nov94/Feb95/May95 Survey Avgs. vs. NSI Nov95/Feb96/May96 Avgs.  
Note switch effective July 95

### VHF To VHF Switch

Seattle / Market Rank #12

#### 1 Hour Daytime Drama Average

|            | <b>KIRO</b><br>①<br><b>Ch. 7</b><br><b>1994-95</b> | <b>KSTW</b><br>②<br><b>Ch. 11</b><br><b>1995-96</b> | <b>% Change</b> |
|------------|--|---|-----------------|
| HH Rtg     | 2.9  | 2.4   | -17%            |
| W25-54 Rtg | 1.6  | 1.8   | 13%             |

#### CBS Evening News

|            | <b>KIRO</b><br>①<br><b>Ch. 7</b><br><b>1994-95</b> | <b>KSTW</b><br>②<br><b>Ch. 11</b><br><b>1995-96</b> | <b>% Change</b> |
|------------|--|---|-----------------|
| HH Rtg     | 6.0  | 2.3   | -62%            |
| A25-54 Rtg | 3.2  | 1.5   | -53%            |

#### CBS Primetime

|            | <b>KIRO</b><br>①<br><b>Ch. 7</b><br><b>1994-95</b> | <b>KSTW</b><br>②<br><b>Ch. 11</b><br><b>1995-96</b> | <b>% Change</b> |
|------------|--|---|-----------------|
| HH Rtg     | 10.8   | 6.8   | -37%            |
| A18-49 Rtg | 5.3  | 3.4   | -36%            |

#### Sign-On/Sign-Off (6am-2am)

|            | <b>KIRO</b><br>①<br><b>Ch. 7</b><br><b>1994-95</b> | <b>KSTW</b><br>②<br><b>Ch. 11</b><br><b>1995-96</b> | <b>% Change</b> |
|------------|--|---|-----------------|
| HH Rtg     | 4.9  | 2.9   | -41%            |
| A18-49 Rtg | 2.2  | 1.5   | -32%            |



Source: NSI Nov94/Feb95 Survey Avgs. vs. NSI Nov95/Feb96 Avgs.  
Note switch effective March 95

## Affiliate Switch Markets

Examples Of FOX Switching From A UHF To A VHF Facility With No Major Rating Growth

### Dallas / Market Rank #8



#### FOX Primetime

|            | KDAF<br> | KDFW<br> |                 |
|------------|---|---|-----------------|
|            | Ch. 33  | Ch. 4   |                 |
|            | <u>1994-95</u>  | <u>1995-96</u>  | <u>% Change</u> |
| HH Rtg     | 8.2   | 8.5   | 4%              |
| A18-49 Rtg | 7.3   | 6.9   | -5%             |

Source: NSI Nov94/Feb95/May95 Survey Avgs. vs. NSI Nov95/Feb96/May96 Avgs.  
Note switch effective July 95

### Atlanta / Market Rank #10



#### FOX Primetime

|            | WATL<br> | WAGA<br> |                 |
|------------|---|---|-----------------|
|            | Ch. 36  | Ch. 5   |                 |
|            | <u>1994</u>   | <u>1995</u>   | <u>% Change</u> |
| HH Rtg     | 11.0  | 11.1  | 1%              |
| A18-49 Rtg | 9.6   | 8.5   | -11%            |

Source: NSI Nov94 Survey vs. NSI Nov95 Survey  
Note switch effective December 94

### Phoenix / Market Rank #19



#### FOX Primetime

|            | KNXV<br> | KSAZ<br> |                 |
|------------|---|---|-----------------|
|            | Ch. 15  | Ch. 10  |                 |
|            | <u>1994</u>   | <u>1995</u>   | <u>% Change</u> |
| HH Rtg     | 7.6   | 7.9   | 4%              |
| A18-49 Rtg | 7.5   | 7.2   | -4%             |

Source: NSI Nov94 Survey vs. NSI Nov95 Survey  
Note switch effective December 94

### Milwaukee / Market Rank #32



#### FOX Primetime

|            | WCGV<br> | WITI<br> |                 |
|------------|---|---|-----------------|
|            | Ch. 24  | Ch. 6   |                 |
|            | <u>1994</u>   | <u>1995</u>   | <u>% Change</u> |
| HH Rtg     | 7.2   | 7.9   | 10%             |
| A18-49 Rtg | 6.2   | 5.5   | -11%            |

Source: NSI Nov94 Survey vs. NSI Nov95 Survey  
Note switch effective December 94

### New Orleans / Market Rank #41




#### FOX Primetime

|            | WNOL<br> | WWUE<br> |                 |
|------------|---|---|-----------------|
|            | Ch. 38  | Ch. 8   |                 |
|            | <u>1995</u>   | <u>1996</u>   | <u>% Change</u> |
| HH Rtg     | 7.1   | 7.4   | 4%              |
| A18-49 Rtg | 6.0   | 5.8   | -3%             |

Source: NSI Feb95/May95/Nov95 Survey Avgs. vs. NSI Feb96/May96/Nov96 Avgs.  
Note switch effective January 96

## NFL Football CBS / FOX Comparison - Rating Men 18+

### Largest 5 Markets Where FOX Is Currently Affiliated With A UHF Station

|        |   | National | Chicago |         |      | Philadelphia |         |      | Boston |         |     | Houston |         |      | Minneapolis |         |      |
|--------|---|----------|---------|---------|------|--------------|---------|------|--------|---------|-----|---------|---------|------|-------------|---------|------|
|        | Affil.  | Rtg      | Ch.#    | Station | Rtg  | Ch.#         | Station | Rtg  | Ch.#   | Station | Rtg | Ch.#    | Station | Rtg  | Ch.#        | Station | Rtg  |
| Nov'93 |  | 11.8     | 2       | WBBM    | 16.3 | 10           | WCAU    | 22.9 | 7      | WHDH    | 8.5 | 11      | KHOU    | 13.5 | 4           | WCCO+   | 19.5 |
| Nov'94 |  | 11.0     | 32      | WFLD    | 30.0 | 29           | WTXF    | 26.6 | 25     | WFXT    | 8.4 | 26      | KRIV    | 14.0 | 29          | WFTC    | 22.8 |
| Nov'95 |  | 11.4     | 32      | WFLD    | 23.5 | 29           | WTXF    | 17.9 | 25     | WFXT    | 5.6 | 26      | KRIV    | 14.5 | 29          | WFTC    | 19.5 |

Note: Local Market data based on games running in November sweep periods. Game matchups vary from year to year.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Review of the Commission's )  
Regulations Governing Programming )  
Practices of Broadcast Television ) MM Docket No. 95-92  
Networks and Affiliates )  
 )  
47 C.F.R. §73.658(a), (b), (d), )  
(e) and (g) )

REPLY COMMENTS OF CAPITAL CITIES/ABC, INC.

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November 22, 1995



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
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Review of the Commission's )  
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47 C.F.R. §73.658(a), (b), (d), )  
(e) and (g) )

To: The Commission

REPLY COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. ("Capital Cities/ABC") submits herewith its Reply Comments in the above-captioned proceeding. In analyzing the opening comments, we have focused on the principal purposes for which the network affiliation rules were enacted 50 years ago -- to preserve affiliate autonomy to program in the public interest, and to remove entry barriers to new networks.

As we will show below, none of the proponents of retaining the rules has presented evidence or arguments to show that the rules remain necessary to achieve these core purposes. In the first two sections of these reply comments, we deal with the questions of affiliate autonomy and entry barriers and comment primarily on the comments filed by the Network Affiliated Stations Alliance ("NASA") and the United Paramount Network ("UPN"). In the third section, we analyze the comments filed with respect to one of the rules at issue -- the dual network rule. In the final section, we comment

on the proposal made by Southern Broadcast Corporation of Sarasota ("SBC") with respect to the territorial exclusivity rule.

I. Affiliate Autonomy

A. Networks Do Not Have Market Power Over Their Affiliates

The thrust of the NASA argument and the accompanying analysis by National Economic Research Associates, Inc. ("NERA") is that it is advantageous to a station to be affiliated with a network and that this gives a network leverage in bargaining with its affiliates. What NASA does not and cannot show is that this leverage, to the extent that it exists at all, constitutes network market power which would enable networks to interfere with affiliates' ability to fulfill their public interest obligations.

NASA and NERA argue that the networks have the upper hand in bargaining with the affiliates because network affiliates are more profitable than independent stations and stations thus have strong incentives to be affiliates. Indeed, NERA's Table 15 shows that affiliates profits have increased, and NERA concludes that "affiliation is as attractive an alternative to stations today as it was in 1980".<sup>1</sup> This argument itself proves that the networks do not have market power. If a network had market power, it would be able to extract virtually all of the value from the network/affiliate relationship without fear of losing the

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<sup>1</sup> National Economic Research Associates, Inc., Broadcast Television Networks and Affiliates: Economic Conditions and Relationship -- 1980 and Today (Oct. 27, 1995) ("NERA Study") at 8, submitted with Comments of Network Affiliated Stations Alliance (filed Oct. 30, 1995) ("NASA Comments").

affiliate. Networks are unable to appropriate that value because they face fierce competition from other networks and other program sources.

B. Absent Network Market Power, There Is No Reason For The Commission To Regulate The Bargaining Between Networks And Their Affiliates

Absent network market power, there is no reason to believe that a network could force clearances on its affiliates or that network/affiliate bargaining would result in foreclosing the ability of affiliates to present locally-oriented public interest programming. As we pointed out in our opening comments, a network and its affiliates are partners in an interdependent, symbiotic relationship the product of which is a program service which blends national and local programming. As is true of partnerships in many other contexts, the pursuit of unilateral advantage by either partner could jeopardize the objectives of the joint enterprise. Networks and affiliates could each argue that at the margin there is a temptation for the other to engage in such conduct. We would submit that when and if that occurs, the parties themselves are best equipped to resolve their differences through negotiation. There is no reason for the government to weigh in on the affiliate side; indeed, regulation may reduce the incentive of the affiliate partner to negotiate in good faith. When the Commission's Network Inquiry Special Staff ("NISS") closely examined the network/affiliate dynamic in 1980, it concluded that the rules at issue had at best little effect on affiliates' clearance patterns, because of

"the failure of the Commission to recognize that a network and its affiliates have a joint incentive to maximize the profitability of network programs".<sup>2</sup> That observation remains as true today as it was then.

C. The NERA Analysis Does Not Prove That The Networks Have Superior Bargaining Power

Instead of arguing that the networks have market power, NERA argues that they have superior bargaining power -- a proposition that, even if true, would not justify maintaining the rules at issue. NERA's analysis, however, does not support even the limited proposition to which it is addressed. To the contrary, NERA relies on misleading comparisons, misinterprets the data it cites and ignores other facts that undermine its argument.

NERA's first error is to choose 1980 as a base year to track changes in relative bargaining power. The rules were predicated not on conditions in the television marketplace in 1980 but on conditions in radio in 1941. The rules were first applied to television in 1945 without modification or substantial comment.<sup>3</sup> NERA implies that 1980 is significant because the Commission made an affirmative finding in that year not to eliminate the rules. The Commission made no such finding. The real significance of 1980 is that it was in that year that NISS recommended that the rules be repealed because they "have largely failed to further the

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<sup>2</sup> Network Inquiry Special Staff, New Television Networks: Entry, Jurisdiction, Ownership and Regulation, Final Report, October 1980 ("NISS Report") at IV-55.

<sup>3</sup> Notice, par. 2.

attainment of the Commission's goals of competition, diversity, and localism," and because they increase the costs of networking and might tend to bias new network programming away from broadcast outlets.<sup>4</sup> Since the marketplace facts on which NISS relied in 1980 continue to prevail, the NISS conclusions are still valid.

NERA examines a number of "external" or market factors that affect bargaining power -- one being the number of alternatives available to networks and affiliates -- as well as three "direct" measures of the network/affiliate relationship -- clearances, compensation and relative profitability. None of these factors supports the conclusion that networks have superior bargaining power in negotiating with their affiliates.

1. NERA's Analysis Of The Alternatives Available To Networks And To Affiliates

NERA's analysis of the number of alternative networks and affiliates does not support its conclusion that this factor has shifted bargaining power to the networks.

While NERA cites the increase in both the number of stations and networks,<sup>5</sup> it fails to acknowledge that such increases have added to the network competition for stations. One expects more competition when there are six networks bidding to affiliate with one of the six stations in a DMA than when there are only three networks bidding to affiliate with one of three stations in a DMA.

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<sup>4</sup> NISS Report at IV-55 - IV-56.

<sup>5</sup> NERA Study at 3.

NERA's analysis also ignores the "UHF handicap". While, as Fox has proven, UHF stations are a fully adequate base for building a network, the disparity between VHF and UHF outlets, to the extent that it remains, is a factor that increases the affiliates' bargaining leverage. Most network affiliates are VHF stations. NERA's Table 4 shows that 74% of the affiliates of ABC, CBS and NBC are VHF stations. While most Fox affiliates are UHF stations, when the affiliates of all four networks are grouped together, VHF stations account for 65% of the total.

## 2. NERA's Clearance Analysis

The NERA clearance analysis, which purports to show that the percentage of clearances of network programs on ABC, CBS and NBC affiliates increased from 1977 to 1994, does not support NERA's conclusion that the networks have increased their bargaining leverage.

NERA itself concedes that the clearance increases it found are statistically insignificant.<sup>6</sup> In spite of this fatal flaw in its analysis, NERA attempts to keep alive its case for increased network power by positing that clearances should have decreased during the period because of the decline in network viewing shares.<sup>7</sup> But NERA fails to mention that broadcasters as a group have lost audience to competing video outlets during the same period. Therefore, network programs, which are still the most

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<sup>6</sup> NERA Study at 11 n. 27.

<sup>7</sup> Id. at 11.

highly-rated, continue to be the most attractive programs relative to the competition. Moreover, NERA's analysis fails to take into account strong countervailing evidence that network leverage has declined. Between 1977 and 1994, the original networks were forced to cut their daytime programming back substantially because of their inability to persuade their affiliates to clear programs they had offered; in 1994, the original networks collectively programmed 25 fewer hours per week than they had in 1977.<sup>8</sup>

### 3. NERA's Affiliation Compensation Analysis

NERA's affiliate compensation analysis, which purports to show a reduction in compensation from 1980 to 1993 after adjustment for inflation, is distorted for a number of reasons.

First, it isolates compensation as if it were the only value that stations derive from affiliation. In fact, the value of affiliation has many components. In addition to compensation, it includes, among other things, the commercial availabilities the network allows stations to insert within network programming and the benefits of audience flow that high-rated network programs provide to the stations' local programs. Station profitability

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<sup>8</sup> Economists Incorporated, An Economic Analysis of the Prime Time Access Rule (March 17, 1995), submitted in MM Docket No. 94-123 ("PTAR Economic Analysis") at 23 and Appendix D. NASA cites an article describing CBS' 1993 efforts to obtain live clearances of the "Letterman" show as evidence of network power over affiliates. Yet, the thrust of the article is that CBS encountered stiff opposition from many affiliates and was obliged to make extraordinary efforts to achieve its objectives, including reliance on independent and Fox-affiliated stations. CBS' experience demonstrates that the networks do not have the power to force clearances and that they pay dearly for those clearances. Broadcasting & Cable, Aug. 16, 1993 at 17.

would be a more accurate measure of all these factors combined. Yet, NERA does not assert that affiliate profitability has declined. Instead, its Table 15 shows that station profits increased during this period.

Even if it were appropriate to analyze compensation as a separate factor, NERA's analysis is fundamentally flawed. First, it fails to take into account the compensation increases since 1993 which occurred as a direct result of the competition from Fox for affiliations. The resulting affiliation switches, which have affected some 90 stations in 43 markets, have increased the bargaining leverage not only of the stations that have switched but of all affiliates in these markets. Affiliates have used that leverage to negotiate substantial increases in compensation since 1993 reportedly on the order of \$200 million.<sup>9</sup>

Second, NERA fails to control for a number of variables which could depress average compensation without necessarily reducing the compensation for any station or group of stations. Two of those variables are a) the number of new affiliates, mostly UHF stations in smaller markets with low levels of compensation, which would bring down the average and b) the amount of programming the networks offer. Since compensation is tied to programs

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<sup>9</sup> Variety, Sept. 4-10, 1995 at 25, 30; Broadcasting & Cable, Dec. 19, 1994 at 34. NERA seeks to pass off the massive increases in compensation since 1993 by arguing that it "would not put affiliates in a better position today after accounting for inflation." NERA Study at 10. According to NERA, total affiliate compensation in 1994 was \$396 million. Id. at 10 n. 25. However, an increase of over 50% in affiliate compensation in one year, from about \$400 million to about \$600 million, obviously indicates a substantial improvement in the affiliates' position.



cleared, NERA's failure to account for the drop in the number of programs offered, which we discuss above, distorts the compensation comparison.

If one examines the number of affiliate commercial availabilities within network programs -- a key factor NERA ignores -- the inadequacy of NERA's compensation-only analysis becomes readily apparent. Since 1990, the number of commercial spots in network prime time programs that ABC has made available for sale by its affiliates has increased by approximately twelve 30-second spots per week.<sup>10</sup> Even using the conservative figure of \$100,000 as the sales value of an average network prime-time spot, the twelve additional spots represent \$60 million per year in value transferred to affiliates, dramatic proof of the shift of bargaining power in favor of affiliates.<sup>11</sup>

#### 4. NERA's Comparison Of Affiliate And Network Profits

Comparing the profits of affiliates with those of networks is not a proper measure of relative bargaining power. Profits, at either the network level or the station level, are a function of a host of factors that have nothing to do with the dynamic of the network/affiliate relationship -- for example, the

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<sup>10</sup> While the absolute number of commercial spots in ABC prime time programming has also increased during this period, the affiliates have received a greater proportion of the newly created spots than they have historically received.

<sup>11</sup> Our tracking of local availabilities in CBS and NBC primetime programming suggests a similar increase in the number of spots made available for sale by those networks' affiliates.